IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12378 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAJANBHAI SAMATBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12378 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 27.11.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM" for short), as, it is found by the authority that he is indulged in black marketing.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the grounds of detention, it is stated that the petitioner is keeping illegally "Naptha" in his agricultural land and on further scrutiny, certain barrels of Naptha were found from the land of the petitioner. The said quantity of Naptha was brought in two motor tankers at his agriculture land. The department, after making necessary inquiry, seized the material and recorded the statements of the petitioner on the very day, i.e. on 25.9.2002. It is submitted that the petitioner also admitted the said illegality by making a statement before the authority on the same day, i.e. on 25.9.2002. The said fact is also mentioned in the detention order in para 3(5). Thereafter, the sample was sent for FSL report and, after receiving the report, the detention order is passed, which is dated 27.11.2003. The said detention order is challenged by the petitioner by way of this petition.

#. At the time of hearing of this petition, it is submitted by Mr.Pahwa that there is a delay in passing the detention order. It is submitted that the alleged incident occurred on 25.9.2002. He submitted that the petitioner also admitted about his illegality on that very day at the time when the officer of the department raided his premises. It is submitted that, in spite of the said fact, the detaining authority waited upto 27.11.2002 for passing the detention order. He submitted that, if, really the activities of the petitioner were required to be curbed, it was not necessary to wait for such a long time, as, delay in passing the detention order would frustrate the entire object of passing the detention order. In Special Civil Application No.78 of 2000 which is decided on 16.3.2000, this Court (Coram: A.L.Dave,J) has observed in para 6.1 as under.:

> "So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not

explained by the detaining authority in the affidavit in reply. In paragraph 11 of this affidavit in reply, the detaining authority states as under:-

"I say that it is true that inspection of shop was carried on 11-8-1999 and order of detention is passed on 13-12-1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention."

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkr, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry/Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed."

#. Considering the aforesaid aspect of the matter and considering the fact that the detaining authority has not acted promptly, even though, the petitioner has admitted his guilt, the petitioner is required to be released from detention in view of the long delay between the occurrence of the incident and passing the detention order. Even after the report of FSL dated 29.10.2002, the detention order was not passed immediately and the same was passed thereafter, i.e. on 27.11.2002. When a person is detained under the preventive detention, the object is to see that he may not carry on such illegal

activities. No laxity is required to be shown in such cases in passing the prompt order of detention. Unfortunately, that has not been done in the present case.

#. Mr.Pancholi, learned AGP, has relied upon the affidavit-in-reply filed by Mr.R.R.Damor, District Supply Officer. In para 2 of his reply, the delay is tried to be explained as under.:

"With reference to ground 3(n3) of the petition, I say and submit that the inspection was carried out by my predecessor, i.e. another District Supply Officer on 25.9.2002 and on that day the statement of the petitioner was recorded. I further and submit that however, which pertinent to note here that on the same day, the sample was taken from the material, which was seized from the petitioner and the said material was sent for analyses to the Forensic Science Laboratory on 27.9.2002. Without the report of the Forensic Science Laboratory about the material, which was seized it is difficult for sponsoring authority to come to the conclusion that the material, which was seized is Neftha, and therefore as Prudent Officer, the officer has waited for the report of the Forensic Science Laboratory. I further say and submit that the said report from the Forensic Science Laboratory was received in my office on 29.10.2002. I further say and submit that in the meantime, the concerned head clerk was dealing with this aspect, was on leave from 15.10.2002 to 30.11.2002 and therefore, the said report from the Forensic Science Laboratory was received in my office on 29.10.2002. Thereafter the detention order was passed on 27.11.02 thus the period between the receipt of the F.S.L. report and the issue of detention order is 28 days which is less than one month. Hence the submission by the petitioner is the amendment petition stating that there is a delay of about more than one month is not correct. I further say and submit that during these 28 days period, 10 days were Public holidays, due to Diwali festival and other holidays. I further say and submit that my predecessor D.S.O. Shri P.D.Palasana was transferred and I took over charge as D.S.O. Bhavnagar on 12.11.02. My predecessor D.S.O. was busy with the preparation of election work as he was appointed as Returning

> Officer for Talaja assembly constituency more over he was out of head-quarter for 3 days after the receipt of F.S.L. report and before he handed over the charge go me. I further say and submit that I took over the charge as District Supply Officer in this particular district on 12.11.2002, and thereafter immediately I have perused the relevant file, relevant record and the report of the Forensic Science Laboratory and after considering the record, I was of the opinion that this is a fit case in which I should forward the proposal to detaining authority for passing appropriate order under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and therefore, I sent the proposal with necessary papers and documents on 20.11.2002."

However, considering the reply, it is clear that the matter was not taken so seriously and passing of the order is delayed on one ground or the other. In such type of serious cases where the detenu is dealing in the essential articles or commodities, the detaining authority was expected to take prompt action in passing the detention order and it was not necessary to wait further for passing the detention order especially when the entire material was available before the detaining authority.

#. Considering the aforesaid aspect of the matter and considering the fact that even after getting the report of the FSL which was received after about one month from the alleged incident, it was not necessary to wait further, as, delay in passing the detention order in such cases may even frustrate the entire object of passing the preventive detention order, as, during that period naturally a person, who is having tendency of black marketing, may be tempted to continue such illegal activities till he is actually detained. Mr.Pancholi submitted that the department will now also file appropriate prosecution, as, the offence in question is punishable upto 7 years imprisonment and that immediate action now will be taken for filing the prosecution against the detenu. It is also a matter of regret that till today even the ordinary prosecution is not launched wherein there is a provision of punishment upto seven years. However, so far as the said aspect is concerned, naturally, this Court is not required to say anything, as, it is for the department to decide, whether any prosecution is required to be launched or not.

#. In view of what is stated above, the petition is allowed. The order of detention dated 27.11.2002 is quashed and set aside. The detenu Sajanbhai Samatbhai Bharwad is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)

(pathan)